THE CHARACTER OF VILLEIN TENURE.[1]

STUDENTS of Economic History have of late years begun to awake to the fact that during the period of the Tudors, and over a considerable area of England, there took place an agrarian revolution which altered the whole aspect of country life. This revolution was the substitution of pasture for tillage, of pasture with large and enclosed farms for tillage on the old intermixed or open-field system. Its significance we still further appreciate when we notice that, after a time, the new generation of farmers settled down to what is known as a "convertible husbandry." To devote their lands continuously to sheep-breeding did not turn out quite so profitable as was at first expected; and it was seen to be expedient to plough up the pasture every few years for a harvest or two. What took place at this time in England was, accordingly, only the English phase of the great movement from open-field tillage to enclosed convertible husbandry, which manifested itself during the same or a somewhat later period over a large part of Western Europe.

I propose in this paper to deal with but a part of this revolution, and that in only one of its aspects. It has been recently said by an eminent writer,[2] that while there is plenty of work still to be done on earlier social history, for this middle period little more can be desired. Its main features, we are told, are already quite clear; the materials necessary for the student's purpose have been printed, and are easily accessible. But as soon as we begin to look

[1] A paper read before the Economic Section of the British Association at its Leeds Meeting, September 5, 1890.

[2] Sir Frederick Pollock, in a paper on "Early Landholding," in Macmillan's Magazine. For April, 1890.

more minutely into the accounts of the matter which are to be found in our usual authorities, we discover that this is somewhat too contented a view. For—to mention but one reason for misgiving—it may be doubted whether we have yet quite incorporated into our current thoughts the picture of mediæval husbandry which we owe to Mr. Seebohm. Or rather, though we may have grasped the manorial organization of the thirteenth century, when we get to Tudor times we are apt somehow to imagine that we are in the world of to-day. "Farm" and "Field" and "Tenant" sound as if we knew all about them; the chief difference that occurs to us is that there were a good many more small farmers than there are now; and we make them picturesque by calling them "yeomen." But when we come to read the documents of the sixteenth century, we hardly get beyond the well-worn quotation about Latimer's father—which everybody must be heartily sick of by this time—without suspecting that familiar terms did not exactly denote then what they denote now. Tedious as it may be, we have to go back to the rudiments—the manor and its constituent parts: first the land in demesne, cultivated by the lord or his bailiff for the lord's use; then the land in freehold; then, and most important, the land in villeinage or "customary" tenure; next, the separate pasture closes; next, the meadows; and lastly, the common pasture and waste. The organization of rural society had become much more complicated since the thirteenth century; the frequent partitions of manors, on the one side, and the occupation of villein or customary holdings by men of position and wealth, on the other, had gone far to destroy the symmetry of the manorial system. Yet modern history is much more mediæval than we suppose. Our only safe course is to take the normal manor for our guide; and when we are told, for instance, of a case of "enclosure," to ask, which of these diverse elements of the manor did it affect, and by what means was it able to affect them?

According as we answer these questions must we conceive of the social consequences of the particular change.

Each of the various ways in which the new sheep-farming was introduced needs to be investigated afresh; and we may well begin with that which was most far-reaching in its consequences—the removal from the soil of the customary tenants.

It is hardly necessary to explain that the kernel of the mediæval manor was a group of tenants, called in earlier times *villeins*, and known in the fifteenth and sixteenth centuries as *customary tenants* and *copyholders*. These copyholders did not hold their arable lands in continuous stretches, in considerable pieces, such as we *now* call "fields," grouped round a farm-house; they held them in a number of acre or half-acre strips, scattered over the two or three enormous areas, each some hundreds of acres in size, then known as "the fields." In earlier times no villein had more than from twenty to fifty (usually thirty) of these acres; and no two strips held by one man were contiguous: and, although a good deal of consolidation had since taken place, the customary holdings were still as a rule small, and held in scattered pieces. But if sheep-farming was to be introduced instead of tillage, it was necessary that the great stretches of "fields" should be, partially at least, hedged or fenced in; and the open acres of corn, oats, or fallow superseded by pasture. And this did actually take place to a very considerable extent. But here a distinction has to be drawn. In the period from the accession of Elizabeth to the middle of the seventeenth century—when the agrarian revolution stopped for a time, to be renewed a hundred years later—during that period enclosures were usually effected with the consent of all the land-holders concerned. The result, so far as regards the tenants, was only that they now obtained, instead of some thirty scattered strips, which they had been obliged to cultivate in a particular way, four or five fields of six or seven acres each, which they were free henceforward to employ

as they pleased. Even these enclosures had further and less satisfactory consequences, so far as other classes of the agricultural population were concerned; though on these we cannot now dwell. But in the earlier part of the same movement, during the period which may be roughly defined as from 1450 to 1550, enclosure meant to a large extent the actual dispossession of the copyhold or customary tenants by their manorial lords. This took place either in the form of the violent ousting of the sitting tenant, or of a refusal on the death of one tenant to admit the son, who in earlier centuries would have been treated as his natural successor. Proofs abound; there is, for instance, the well-known passage in More's *Utopia*: "That on covetous and unsatiable cormoraunte . . . . maye compasse aboute and inclose many thousand akers of grounde together within one pale or hedge, the husbandmen be thrust owte of their owne, or els either by coueyne and fraude, or by violent oppression they be put besydes it, or by wrongs and iniuries they be so weried that they be compelled to sell all."[1]

Now the question which I wish especially to raise is this: What was the contemporary legal theory as to the position of the majority of customary tenants, and what was the practical effect of the theory? It is usually held that, whatever may have been the original insecurity of the villein's position, his successor had by this time arrived at a security of tenure guaranteed by law; so that when a lord ousted a customary tenant he knew he was violating the law, and trusted to the man's ignorance, or poverty, or fear, to escape its enforcement. It is sometimes granted that the law may not have been quite clear, but it is implied that, even if this were the case, that the lords did not know it. Both positions seem to me questionable, especially the

[1] Ralph Robinson's translation, in Arber's Reprint, p. 41. Moore's own Latin text runs "ejiciuntur *coloni* quidam suis." As to the nature of the clearances, see also Bacon, Hist. of Hen. VII. (Bohn ed. p. 359), and Select Works of Crowley (E. E. T. S.) p. 122.

first. No doubt the dispossession of the tenants was regarded by the tenants themselves and by most observers as a violation of customary right; no doubt also many tenants were evicted by the strong hand, the term of whose tenure was such that they could have maintained themselves had they been able to go to law. But I hope to be able to show that, so far as the mass of copyholders were concerned, they had, at the beginning of the period, *no legal security;* that the lords knew this and acted upon it; and that the government knew it and were influenced by it. It follows from this that the law as we find it toward the end of the period in Coke, which does give the customary tenant a security of tenure, must be regarded as itself the product of the *Sturm und Drang* of the preceding century and a half.

There was a time, we can hardly doubt, when the great body of villeins all over the Midland and Southern counties[1] held their lands on much the same terms, whatever these may have been. But with the growth of royal courts of justice, and of a body of professional lawyers, distinctions came to be drawn between the tenure of this or that villein, this or that district. All their holdings were still nominally "at the will of the lord," "ad voluntatem domini,"—a phrase which must surely have meant what it says at some time.[2] But some were now expressly "for life," "ad vitam"; while other customary tenants, still more fortunate, held "to themselves and their heirs."[3] The

[1] This limitation is added to avoid the necessity of considering for the present the peculiar tenures of some parts of Eastern and Western England.

[2] There seems no reason, if we put aside the unproved "mark theory," why we should not agree with what Coke says in the matter, especially as he seems to point to a survival of the earlier conditions as existing in his own time: "These tenants in their birth, *as well as the Customary Tenants upon the Borders of Scotland who have the name of Tenants*, were mere Tenants at will; and though they kept the Customs inviolate, yet the Lord might, sans controll, eject them." —Complete Copyholder. Sec. 32, ed. 1668, p. 67.

[3] This is found as early as 1328, *e. g.*, in a surrender of that date, "ad opus Martini et Aliciae uxoris ejus et heredum suorum, tenedum in vilenagio, ad voluntatem domini," in Cressingham Court Rolls, priv. printed by H. W. Chandler, 1885, p. 18.

very use of the term "for life" implies an understanding that when the life expired the lord could do with the land as he pleased. It may have been usual to put in the son or other heir of the previous tenant; but the lord was under no legal obligation to do so; and as soon as the point was raised, in 1607, the judges held that an alleged custom to compel the lord to admit in such cases was void.[1] On the other hand, where a grant had been made to a man and his heirs, if the lord refused seisin to the heir he could hardly fail to know that he was doing what was illegal; though, even in this case, the aggrieved heir was denied access to the royal courts down to as late a period as 1468. He could only proceed by way of petition, in the court of the manor, where we can scarcely suppose he was sure of finding justice.

Most customary tenants, however, were probably still admitted to the occupation of land without any such specification of the duration of their holdings. If, under such circumstances, the lord determined to take the land back again into his own hands, it looks as if the law as it stood in 1450 would be upon his side. The two cases of dispossession of a sitting tenant and of refusal to admit the son or other heir of a previous tenant are, of course, distinct, and need separate examination. But the violation of general sentiment would be much the same in either case; the lord's power in either case was, as I conceive it, much the same; and our evidence includes both; so that for the present they may be taken together.

For our first piece of evidence we must go some way back, but it is worth paying some attention to. It is an account of the politic action of a certain Abbot of Abingdon, at the end of the eleventh century. We are told by

[1] Lord Gray's Case, before the Star Chamber, 4 Jac. I. "Ils claime un custome que puis le mort le tenant pur vie d'un copyhold, le Seignior est compellable de faire un auter estate pur vie al eigne fits or fille sil n'ad fits, et sic in perpetuum . . . Pur le custome les 2 Justices Popham et Cook semblont ceo destre encount' le Ley."—Cases Collect. etc., per Sr Francis Moore, 2d ed., 1675, p. 788, pl. 1088.

the chonicler that "on the estates of the monastery it was held to be the law that one tenant could get the consent of the reeve by a bribe, and expel another from his house; and that, when a tenant died who had held a fertile piece of land, a man might, by means of a bribe, get himself admitted, without any compensation being given to the wife or sons of the late tenant.[1] As the Abbot wanted money for his buildings, he arranged with the tenants that these grievances should be removed in return for certain payments. It does not seem likely that such a condition of things as the chronicler describes would be found only on the manors of one particular monastery; and if we suppose that it existed in other parts of the country, it is fair to conjecture that it would be long before it disappeared.

When we get down to the period of text-books, we find Glanvill, at the end of the next century, describing the villein as absolutely devoid of all rights of property. Even if we consider his doctrine of villeinage to have received its color from Roman law, and to have been in some measure irrelevant to the actual life of the time, it cannot have been without influence on the mind of lawyers as soon as questions of villein tenure came before the courts.[2] Such

[1] The text is obscure, but this seems to be its meaning: "Pro lege per abbatiae loca rusticis deputabatur, ut quislibet eorum, cui vel invidia vel cupiditas alterius adipisci rem inerat, praepositi impleta manu mercaturae beneficio, posset alium de sua mansione expellere. Item et aliud plebeiorum incommodum. Cum aliquis filios et uxorem habens, et agrorum fortunatus frugiferorum, domino suo jura inoffense persolveret, et is debito fine quiesceret, nulla filiis vel uxori ejus gratia rependebatur, sed illis ejectis, in defuncti lucrationibus extraneus data pecunia inducebatur."—Chron. de Abingdon (Rolls Series), ii. p. 25. I am indebted for this reference to an article by the Rev. E. A. Fuller in Proc. Bristol and Glouc. Arch. Soc., 1877-8. It is perhaps not necessary for the present argument to consider earlier evidence; but it may be noticed that in the Rectitudines Singularum Personarum it is laid down that when the *gebur* dies his lord is to take possession of all he leaves. The Latin version, which is probably of the 12th century, and which clearly identifies the *gebur* with the *virgarius*, runs "Si mortem obeat, rehabeat dominus suus omnia." Schmid, Gesetze der Angelsachsen, p. 375.

[2] It would seem, to judge from the "Persones Tale of Chaucer," that the legal theory which treated the villeins as incapable of property had not been forgotten,

a case is presented to us in 1280. In that year the Abbot of Burton, annoyed by some proceedings which his villeins of Mickleover had ventured to bring against him in the royal courts, proceeded to evict them all, and to seize their cattle. The sheriff sent a writ for the restoration of the cattle, but it was never obeyed; and when some of the tenants brought an action for theft, the Abbot boldly answered that, being villeins, nothing was their own but their bellies; and they could get no remedy. Apparently it never occurred to the sheriff to order the restoration of their tenements; and although they were finally reinstated on paying heavy fines and acknowledging themselves to be "serfs at the will of their lord," it was of the Abbot's free grace—because, in fact, he wanted his lands cultivated, and knew no other way to secure that end.[1]

Some ten years after the date of these proceedings the text-book known by the name of Britton was compiled, and it speedily became the most widely used of legal authorities.[2] In this work a distinction is drawn between villeins on the ancient estates of the crown, and villeins on the estates of the lords. The former, it tells us, "are privileged in this manner, that they are not to be ousted from such tenements so long as they perform the services which appertain to their tenements." But with the latter "villeinage is a tenement . . . delivered to be held at the will of the lord by villein services"; and to make it clear, that "at the will of the lord" is no empty phrase, he returns to the villeins on royal demesne, and adds (speaking in the person of the king), "And even in the

even toward the end of the 14th century. Thus the parson says (*De Avaritia*) that "som lordes stewards," justify unreasonable amercements, "for as moche as a cherl hath no temporel thing, that it ne is his lordes, as they say"; and he attempts later to meet the argument that "the lawe sayeth that temporel goodes of bondfolk ben the goodes of hir lord."

[1] An abstract of the documents is given in Staffordshire Collections, v. p. 82.

[2] I purposely omit all reference to Bracton. So long as we are without a critical edition, and unable to distinguish Bracton's text from later accretions, it is possible to support by his authority almost any opinion as to villein tenure.

manors of the ancient demesnes there are pure villeins both by blood and tenure, who may be ousted from their tenements and deprived of their chattels at the will of the lord."[1]

With the next century the position is changed by the oft-recurring plague. Instead of ousting tenants, lords of land found it hard enough to retain them, even with lightened services. We can readily understand that during such a period the custom of tenant-right would tend to become law; and we might anticipate that when the question came to be raised once more, under the Lancastrian and Yorkist kings, the attitude of lawyers would be different. And accordingly we find Littleton, who writes in 1475, expressing himself as follows: "Although that some such tenants have an inheritance according to the custom of the manor, yet they have but an estate but at the will of the lord, according to the course of common law. For it is said that if the lord do oust them, they have no other remedy but to sue to their lord by petition. . . . But the lord cannot break the custom which is reasonable in these cases." This was the unsatisfactory position in which the law was left in a text-book of great repute, which was speedily printed and passed through several editions: a vague declaration that the lord must not break a reasonable custom, with no explanation what "reasonable" meant, or how the custom was to be enforced.

In the text of Littleton, as commented upon by Coke, appears, indeed, the following addition, which has become

[1] Ed. Nichols, 1865, ii. p. 13. Coke in his Commentary on Littleton, 61 a, makes a most unwarrantable use of the passage here cited concerning villeins on ancient demesne. Referring to what Littleton says of customary tenants *generally*, he adds: "Britton speaking of these kind of tenants saith thus"; when clearly Britton regards those of whom he speaks as occupying an exceptional position. Oddly enough, in his Complete Copyholder, p. 67, Coke justly refers to Britton as confirming his opinion of tenure at will. As to the difference described by Britton between the privileged villeins on royal demesne, and all other villeins, the key to it may perhaps be found in the similar difference between the *coloni* and *servi* in the later days of the Roman Empire. See Fustel de Coulanges, L'Alleu et le Domaine Rural, pp. 55, 71.

a *locus classicus*: "But Brian, chief justice, said that his opinion hath always been, and ever shall be, that if such tenant by custom paying his services be ejected by the lord, he shall have an action of trespass against him, H. 21 Ed. IV. And so was the opinion of Danby, chief justice, in 7 Ed. IV. For he saith that tenant by the custom is as well inheritor to have his land according to the custom, as he which hath a freehold at the common law." But it is significant that this passage does not appear either in an edition of Littleton, printed about the year of his death, or in the issues of Pynson, in 1516 and 1525. It occurs for the first time in the edition of Redmayne, in 1530. What this would seem to indicate is, that the point of law was even in 1530 not yet absolutely determined. We may fairly conjecture that the editor of that year shared in the general indignation which the evictions excited, and that he disinterred a couple of forgotten dicta half a century old, and gave them a place in what had become an established text-book. It does *not* follow from their appearing where they are, that during all that half century these dicta had been well-settled law. The very form of Brian's opinion—which, it will be noticed, is ascribed to as late a date as 1482, and concerns what we should regard as the most extreme display of arbitrary power, the ejectment of an actual tenant—marks it as personal and as consciously opposed to a general belief: "his opinion hath always been and *ever shall be*."[1]

Some light may be thrown on these utterances of Yorkist judges by a consideration of the position of the Yorkist government. The Lancastrian rule had received the support of the landed gentry: the Yorkists were the party of the towns and of the lower classes. When we find that the precisely similar eviction of peasants which went on in many parts of Germany in the sixteenth century was

[1] In the law-French original; "Mes Brian chiefe justice dit, que son opinion ad touts foits este, et enquez serra, si tiel tenant per le custome, etc."—Co. Litt., 60 b.

only prevented from running its full course because the princes, for their own interests, interfered to hinder it,[1] it does not seem extravagant to ascribe to the Yorkist government, and the judges as part of it, a desire to modify the law in such a way as to increase their own popularity, and weaken their enemies the squirearchy. How far they succeeded is an altogether different matter.

That the Yorkist judgments did but little to stem the current of change is manifest from what took place in later reigns. Among the most detailed pieces of information which we possess is a return made in 1517 by the Commissioners of Inquest appointed in that year.[2] Many of the entries simply run as follows: "That A B, knight (*or* gentleman, *or* clerk) has enclosed and put in pasture so many acres in the vill (or township) of C, which were under tillage during the period of the commission." We are told nothing as to the tenure of the land in question. But it is observable that the areas are generally either 30 acres or fractions or multiples of 30; so that they probably represent wholes or portions of virgates—the ordinary *customary* holding.[3] Another series of entries run: "A B has in the vill of C a tenement with so many acres (*e. g.*, 20, 25, 37, 40) of land, which were in tillage since the time of the commission; and now that tenement is fallen, and the land is turned to pasture." This looks like the evidence of a customary tenant, who still says he "has" the land, though his acres have been taken away from him. In one such instance we even find the phrase "*a certain person* has enclosed them"; a hint which the witness was perhaps too frightened to explain.[4] More interesting still,

[1] Roscher, Geschichte der National Oekonomik, pp. 122-3.

[2] Brit. Mus., Lansdowne MSS., i. p. 153. A very short and imperfect abstract is given at the end of the second volume of Schanz, Englische Handelspolitik. I hope soon to be able to print the whole.

[3] Thus, among the first few cases are 60 acres, 30, 60, 22 (= ¾ virgate?); and later, in 5 vills following one another, we have 120, 60, 60, 60, 45.

[4] In Haughboys Magna, in Hund. Harpyngham, Co. Norf: "Stephanus Bolt habet unum tenementum cum xl acris terrae, de quibus *quidam* xl acras inclusit,

in one or two cases we get glimpses of wholesale evictions. Thus, "within the vill of Choysell the houses aforetime of John Willyers are laid waste, and the inhabitants have departed; and there pertain to the said houses 300 acres of land, whereof 30 are (now ?) arable, and the rest are in pasture. And the houses of Burton Lazars in the same vill are laid waste, and the inhabitants have departed; and there belong to the same houses 300 acres of land, whereof 40 are (still ?) ploughed, but the rest are in pasture: and by this downfall the church has fallen into ruins."[1]

Instances of this kind show us that the language of the statutes concerning "the pulling down and destruction of *towns*," so that where once two hundred persons had been employed,[2] there were now but two or three herdsmen, is no exaggeration, but a sober description of what had really taken place. And yet the Acts never imply that these evictions were in violation of the rights of the tenants. They lay down that "houses of husbandry" ought to be maintained, on the ground that it is desirable that men should find employment; but they never provide means by which the copyholders could enforce their legal rights, if they had any. The natural explanation would seem to be that they had none.

My conclusion, then, is this: Of late years our conceptions of mediæval history have been unduly colored by a theory which, as we are now finding, has yet to be proved —the theory, namely, that the group of customary tenants represent an originally free "mark" community, and that the powers of lords of manors are so many encroachments

et posuit ad pasturam xii acras quae fuerunt in cultura post tempus commissionis, et tenementum illud decidit."

[1] It may be well to give the text of the second paragraph: "Item Mansiones de Burton Lazars in villa predicta devastantur, et inhabitantes ibidem recesserunt; et spectant ad eadem mansiones ccc acrae terrae, quarum x arantur, residuae vero in pastura; et per decasum predictum ecclesia ibidem decidit." We are not surprised to find that according to the Imperial Gazetteer, Chosely has now but one house and a population of seven.

[2] See especially 4 Hen. VII. c. 19, and 7 Henry VIII. c. i. Statutes of the Realm, ii. p. 542; iii. p. 176.

which have only acquired a legal authority during the last five or six centuries. The proposition seems far more tenable that, during historical times and until comparatively modern days, the cultivators of the soil were always in a condition of serfdom, and held their lands at the arbitrary will of their lords. For centuries the lord knew no other way of getting his land cultivated, and had no wish to get rid of a tenant; whenever he did so, it was altogether exceptional. But with the tendency to limitation and definition so characteristic of the feudal period, custom tended to harden into law; and it was just on the point of becoming law when a change in the economic situation, the increasing advantage of pasture over tillage, prompted the lords to fall back on their old rights. Then followed a struggle between *a legal theory becoming obsolete*, but backed by the influence of the landowners, and *a custom on its way to become law*, backed by public sentiment and by the policy of the Government.

Much the same tendencies were at work in other countries, especially in Germany. But there the sixteenth century also witnessed a wide extension of the influence of Roman law. The Roman law, with its sharply-defined conception of property, came to the aid of the lords; and this additional weight was just sufficient in many districts to turn the balance. Thus, the Bavarian code of 1518 laid down that the peasant had no hereditary right to his holding, and not even a life-interest unless he could show some documentary evidence.[1] In Mecklenburg a decree of 1606 declared that the peasants were not *emphyteutae* but *coloni*, whom their lords could compel to give up the lands allotted to them, and who could claim no right of inheritance even when their ancestors had held the land from time immemorial.[2] In Holstein, again, a great number of the peasants were expelled from their holdings, and such

[1] Roscher, *u. s.*, pp. 82.

[2] Quoted in Bilguer, Ländliche Besitzverhältnisse in Mecklenburg-Schwerin, pp. 73; from Boll, Mecklenburgische Geschichte, p. 354.

as remained became tenants at will.[1] In England, on the contrary, custom and public sentiment and royal policy had no such counteracting influence to contend with, and the outcome of the contest was the law as we find it in Coke. But even there, in many of Coke's phrases, we can discern how recent and how severe the struggle had been.[2]

Before I sit down I should like to express the feeling which, I am sure, from time to time comes over those who are working at economic history. It is of how very little we as yet know about it. I will not venture to discuss what may be the value of historical work as an aid in handling the problems of the present; nor to distinguish between the half a dozen different things which are commonly confused together under the name of "the historical method." Our President, in the treatise we have all been reading, has held out the olive branch,[3] and even those whose general position is most undeductive will do well do listen to his overtures of peace. But he confesses that it is, after all, very much a matter of temperament whether a man works at economic history or economic theory.[4] Well, if a time should ever come—I do not say it ought—when, after puzzling over "final utility" and "disutility," it should, even mistakenly, occur to anyone that the abstract method scarcely gives him results sufficiently tangible to satisfy his particular temperament, he will not do amiss to remember that there is an alternative field of work. Putting it on what some will regard as the lowest ground—the satisfaction of intelligent curiosity—it is not worth while to try to remove some part of the veil which still conceals from us the life of our forefathers.

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[1] Hanssen, Agrarhistorische Abhandlungen, i. pp. 431–2.

[2] *E. g.* "But NOW *magistra rerum experientia* hath made this clear." Co. Litt. 60 b: and such phrases as "Note that Littleton alloweth," etc., *ib.* 62 a, 63 b.

[3] Marshall, Principles of Economics, especially p. 70.

[4] Ibid., p. 93.